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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5861

KENNETH RAY WILLIAMS,

Petitioner

VS.

KENNETH RAY LUCKY,

Respondent

(IN THE INTEREST OF KENNETH RAY WILLIAMS)

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH SUPREME JUDICIAL DISTRICT
OF TEXAS

RESPONDENT'S MEMORANDUM IN OPPOSITION

MIKE ARANSON
Attorney for Respondent

LAW OFFICES OF MIKE ARANSON, P.C.
LEGAL ARTS CENTER
600 JACKSON STREET
DALLAS, TEXAS 75202
(214) 741-1716

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The Respondent KENNETH RAY LUCKY respectfully requests that this Court deny the petition for writ of certiorari.

REASON WHY THE WRIT SHOULD BE DENIED

1. This Court lacks jurisdiction to hear this case.

Title 28 U.S.C. §1257 provides in part:

> Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (3) By writ of certiorari, where the validity of a . . . State statute is drawn in question on the ground of its being repugnant to the Constitution . . . of the United States . . .

This finality requirement serves several ends:

(1) it avoids piecemeal review by federal courts of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real "case" or controversy" in the real sense of Article III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs. North Dakota Pharmacy Bd. v. Snyder's Stores, 414 US 156, 38 L.Ed 2d 379, 94 S.Ct. 407.

There presently exists a division within the Texas appellate system regarding the issue sought to be litigated here. Texas Dept. of Human Resources v. Chapman, 570 SW2d 46 (Tex.Civ.App. 1978) has upheld Section 13.01 of the Texas Family Code, while In the Interest of Miller, 605 SW2d 332 (Tex.Civ.App. 1978) has held the section unconstitutional.

The Supreme Court of Texas now has before it the question sought to be posed to this Court. The Supreme Court of Texas heard oral arguments in the Miller case (styled In the Interest of J. A. M. in the Supreme Court, and numbered B9871) on the 25th day of February, 1981.

Since the requirements of Title 28 USC §1257 have not been satisfied, the petition for a writ of certiorari should be denied.

CONCLUSION

This court lacks jurisdiction to grant the writ of certiorari.

Respectfully submitted,

LAW OFFICES OF MIKE ARANSON, P.C.

MIKE ARANSON
State Bar No. 01283000

LEGAL ARTS CENTER
600 Jackson Street
Dallas, Texas 75202
Phone: (214) 741-1716